



Improving the quality of Immigration
advice and representation

A report by the Lord Chancellor's Advisory Committee on
legal education and conduct

ILPA'S RESPONSE

1. ILPA broadly welcomes the ACLEC report and finds itself in agreement with much of the comment made. It is also the case that ILPA is sympathetic to many of the views expressed by the Committee (Chapter 7 "The Way Forward") but it is not the case that ILPA endorses these entirely.
2. ILPA recognises that the report is a wide ranging report necessarily so because immigration law and practice is an area combining a wide range of providers of advice, which has been traditionally poorly served by main stream providers of legal education and training, which concerns a clientele suffering from many handicaps including poverty and language difficulties, and which, the evidence suggests, has suffered an unusually high degree of unscrupulous or fraudulent advisors.
3. In its commentary (1.4) on "Immigration and Asylum Law and Practice" the Committee comments that particular problems arise from the lack of availability for legal aid for representation before the Immigration Appellate Authority. ILPA has consistently maintained that the provision of legal aid for immigration appeals is a key element in the provision of adequate legal representation. ILPA believes that there is a special case for this provision in immigration cases. Firstly there is the fact that inadequate representation at this stage can destroy peoples lives - self evidently in asylum appeals. Secondly as the committee itself notes, the lack of availability of funding at this stage can lead to a break in the chain of representation. This not only leads to wasted costs because there is duplicated work but may also lead to errors by even the most well intentioned representatives.

Role of advice in immigration decision making

4. ILPA would wish to point out first that they note the Committee shares ILPA's long standing concern over the activities of unscrupulous and often incompetent immigration advisors. The Committee state that they are in no better position than others to quantify this. However they go on later to state that they believe that the majority of advisors are seeking to assist their clients properly to present their cases. ILPA feels strongly that there is no reason why those concerned in this area should continue to work in the dark about the prevalence of corruption or the prevalence of inadequate advice. Research should be conducted in this area so that better assessments can be made of the problem and more adequate resolutions suggested. It is common ground that there is a "significant" (para 7.2) problem and that this is an area which attracts amongst others "the worst and least scrupulous, advisors and lawyers" (ibid). ILPA would comment in passing that Whilst it is important to distinguish between the unscrupulous and the simply incompetent from a number of points of view (possible criminal liability, effectiveness of particular resolutions of these problems), the concepts are not mutually exclusive, nor always helpful. ILPA members have come across legal practitioners routinely conducting large numbers of immigration cases on a legal aid basis who are providing nothing other than the shell of a legal service. For example deadlines may be met and interviews with the Immigration Service attended, but the client's instructions are not taken in any detail and representations are not made on the client's behalf. Whilst such firms may be able to avoid allegations of fraudulent behaviour, ILPA regards such performance as exploitative and corrupt in its fuller sense.
5. The Committee suggests that there should be clarification of the role that advisors can legitimately play during immigration interviews and the subsequent decision making process. ILPA agrees with this view of the Committee and would wish to have acknowledged the valuable role which representation can play not only for the client but also for the quality of the Home Office's decisions. In practice advisors with sufficient standing and experience are able to perform effectively at most stages of the immigration process but the lack for example of any clear entitlement of a client to have an immigration advisor in interview has led to difficult situations which have prejudiced clients.

6. ILPA also agrees with that government has a considerable role to play in the context of funding. The Home Office and the Legal Aid Board fund a significant proportion of immigration cases whether via grants to the RLC, IAS, Law Centres and other voluntary agencies, or via the Legal Aid Scheme. The government and the Board are in a position to impose and audit standards of conduct of casework. Furthermore ILPA believes it would be highly desirable for such standards to be uniformly applied. ILPA is not aware of steps so far having been taken in this regard.
7. ILPA also shares the Committee's concerns about the effect that reforming the civil advice and assistance scheme may have on the provision of immigration legal services. Indeed ILPA notes that the Lord Chancellor has stated that he has noted these concerns (letter to the Legal Aid Board of 13 October 1998). The Lord Chancellor comments that he attaches great importance to the availability of competent advice in the immigration area and recognises that poor quality advice can be very damaging. ILPA is acutely conscious of the tension between funding cuts or direction of funding and other concerns of the ACLEC report such as standards of casework and accreditation of representatives on the one hand, and availability of immigration advice on the other. However ILPA would like to make clear at this stage that it has always been ILPA's considered view that there should never be a trade off between immigration advice/representation of the necessary quality and other considerations.
8. Again in this context ILPA notes the Committee's concern that seeking to regulate immigration advisors might limit access "to competent initial diagnostic advice provided by community and advice centres". ILPA agrees with the Committee that all such organisations should be offered every encouragement to obtain further training and possible accreditation but would again assert that there should be no dilution of standards.
9. The Committee has not yet reached a view on an external statutory scheme of regulation but takes the view that standards could be improved significantly through other means such as specific professional regulation, legal aid franchising and contracting, and by conditions attached to grants. ILPA shares this view and also believes that these mechanisms can be made to operate much more closely in the area of standards of casework.

It is notable that the experience of the operation of legal aid franchises has been of improvement in the quality of file/case management as opposed to the quality of work or even outcome. This has been a particular concern for the legal aid member lawyers of ILPA.

Standards of conduct of immigration advisors

10. The Committee comments on conduct by caseworkers within the not-for-profit sector, the Law Society and the Bar Council. ILPA is grateful for the acknowledgement of its conduct guidelines. ILPA notes the Committee's specific suggestions. ILPA believes that a key element in the promotion of standards of conduct by immigration advisors is the promotion and continuing review of uniform standards. ILPA would also comment that it regards one element in those standards of particular importance namely the taking of a full statement from the client, in particular asylum applicants. ILPA mentions this point of detail because ILPA has become convinced on the basis of cases of inadequate representation known to it that the taking of a full statement by the representative (as opposed to requesting clients to provide statements) is of fundamental importance.
11. Secondly ILPA regards the promotion of complaints/disciplinary systems to be of the greatest importance. ILPA believes that even where disciplinary systems exist, they are complex, unclear, and uncommunicated to clients. Briefly, so far as solicitors are concerned both the Office for the Supervision of Solicitors and the Law Society have supervisory roles. Additionally franchised/block contracted firms are required to have internal complaints procedures. This disciplinary background (particularly the external procedures) is rarely known to clients. ILPA understands that there is a low instance of negligence claims in the field of immigration law. This is not because representatives are not negligent, they frequently are, but partly because the field is extremely complex and in no small part because of the circumstances of the clientele. ILPA believes that the existing disciplinary procedures should be reformed. ILPA believes that there should be liaison between those bodies having concerns about poor or corrupt immigration representation such as the Office for the Supervision of Solicitors and the Legal Aid

Board. There might also be liaison between those organisations and ILPA. Many practitioners are aware of corrupt practices in the immigration field and are frustrated by the fact that some solicitors firms and other organisations are able to continue to practice either poorly or corruptly so that immigration clients are damaged. Disciplinary procedures must, of course, be fair to those accused, but the professional bodies need to pursue their investigations with the zeal appropriate to alleged malpractice that can have such devastating effect on people's lives.

12. ILPA members have been told informally, on separate occasions by the Office for the Supervision of Solicitors and a member of ACLEC that it may not be the case that failing to take a statement from an asylum claimant client, would be recognised as a breach of good conduct of an immigration case. ILPA can only comment that until this most rudimentary of standards is recognised as an immutable standard there is little prospect of securing the fundamental change in immigration practice that is necessary.
13. Finally in this section ILPA would like to make one further observation. Whilst it has not been the focus of the ACLEC report ILPA would urge an increased awareness within immigration appeals of the consequences of poor representation. Where relevant ILPA members find themselves providing evidence of previous poor legal representation in clients cases. It has sometimes proved difficult to persuade Adjudicators of the importance of such poor representation. For example clients have been told to remain consistent with the first statements they gave to the Immigration Service when such statements may have been false eg through fears that asylum seekers had of immediately being sent back to the country of origin. Self evidently Adjudicators and the Tribunal are uniquely placed to ensure justice for appellants. They are also well placed to collate information about inadequate or corrupt representation and present this to the appropriate disciplinary body.

Standards of competence of immigration advisors

14. ACLEC refers to the wide variety of approaches being pursued in an attempt to set and improve standards of competence both for immigration advice and representation. This in turn reflects the numerous

different providers of immigration representation. ILPA agrees with the Committee that the Law Society, Bar Council and Institute of Legal Executives should seek to introduce guidance on the areas of knowledge and skill required of all their members conducting immigration work. ILPA endorses the Committee's views in regard to the not-for-profit bodies. ILPA would repeat that so far as standards of casework are concerned they believe that the standards should be common to all those advisors.

15. The Committee goes on to suggest that the object of setting standards "at various levels is particularly well suited to immigration and asylum work." ILPA does not follow the Committee's reasoning in this regard nor accept that the field of immigration law and practice is particularly susceptible to the scheme which the Committee go on to suggest namely one of identifying "three broad levels of advice and corresponding competence: the generalist, the specialist and the appellant." Without further analysis than that contained in the Committee report ILPA do not believe that immigration representation can be divided in this manner beneficially for immigration clients. ILPA's response therefore to the first question upon which the Committee has invited views (para 7.28 - (i)) is as follows:

In ILPA's view it is not realistic, in immigration matters, to draw a distinction between those cases where generalist advice and assistance may be appropriate and those that are always likely to require more specialist services although differing levels of skill may be usefully employed with a firm or organisation and there may be scope for a "tiered" system of providers (see paras 19 and 20 below).

16. ILPA applauds any attempt to improve the overall availability and quality of immigration representation. ILPA has worked hard to achieve the ends that the Committee addresses. Unfortunately the reality is that whilst certain facets of cases can be dealt with by less skilled or even (from an immigration law point of view) unskilled caseworkers it is not in ILPA's view realistic to draw distinctions between cases. For example a visitor seeking to remain further to look after a sick mother might require reference to the Home Office concession for carers. A student wishing to remain in order to

work would not normally have a case for applying for permission to work whilst in the United Kingdom. However such an individual might be a Commonwealth citizen with a United Kingdom born grandparent and have a claim to be able to work outside of the work permit scheme. Of course generalist caseworkers would by definition be able to deal with uncomplicated cases. The problem in immigration work is that because of the highly controversial nature of immigration frequently a politically driven inflexibility of the immigration rules not only is there a complex overlay of case law but there is widespread administrative practice which ameliorate the strict legal position.

18. Similarly ILPA notes the Committee's view that asylum law should be an area normally requiring specialist advice and assistance. Ironically asylum applications for certain nationalities can be relatively straight forward. For example at the present time Afghanis and Iraqis will generally be granted protection. However this is not routinely the case and furthermore such cases may require further work in that many Afghanis and Iraqis should be recognised as refugees rather than being granted the Home Office preferred option of exceptional leave to remain.

19. It is ILPA's view that rather than seeking to create an artificial grading of representatives for specific categories of cases, it is preferable that there be increased recognition that certain aspects of casework can be dealt with by less skilled personnel. In order to meet the increased pressure on costs, many legal aid practices use outdoor clerks widely for example for statement taking, or comments on refusal letters, to check discrepancies between documentation and to attend Home Office interviews. ILPA would stress that it believes that less skilled or if the Committee likes generalist advisors can still provide a valuable role in providing an interface between clients and the eventual caseworker. For example ILPA sees no reason why with increasing technology instructions might not be taken in a rural area or at another point where there is no significant immigrant law expertise. That material might then be readily transmitted to the eventual caseworker in the nearby city or indeed anywhere in the United Kingdom.

20. The similar flow of expertise but on another model is that where a less skilled caseworker handles an immigration case throughout but has adequate involvement of and quality control by a skilled caseworker. Such a situation might be a fairly traditional model in a solicitors office. It may be that with appropriate controls it could operate between an evolved second tier service and front line advisors such as that envisaged in the Legal Aid Board report on exclusive contracting (October 1998). That report considers the possibility of second tier services "providing direct support to front line advisors in relation to specific cases, either by telephone, in writing or by personal contact". This does, however, need thought and care. Because communication is often more difficult, this is an area of law particularly prone to misunderstandings. The scope for these is enhanced the further the adviser is removed from the client.

Training for immigration advisors

21. Generally ILPA agrees with the thrust of the Committee's conclusions. ILPA have been extremely active in the provision of immigration law training and recognise very clearly the need for a continuing provision of such training. ILPA believes that immigration law should be more widely promoted as a component in law courses. ILPA believes that the increasing recourse to immigration law for example the prominence of immigration law cases in judicial review reflect a number of factors which indicate the likelihood of immigration law and practice becoming of increasing significance. Those factors include an increasing migrant population, the growth of international travel and mobility of populations and the increasing importance of the movement of people within the European Union or under European Association Agreements. ILPA therefore concurs wholeheartedly with the Committee's view that the cost of training should be taken into account in funding considerations. ILPA welcomes the proposition that training and education be made a compulsory requirement for example by way of standards to meet funding.

Specialisation and accreditation

22. ILPA recognises the very real difficulties mentioned

by the Committee insofar as there might be a tension between accreditation and the provision of immigration advice. However ILPA would refer back to the fundamental principle it mentioned earlier namely that the provision of immigration advice should never be compromised on the basis of an acceptance of weaker perhaps flawed position of legal advice. Firstly ILPA would state that it welcomes, subject to having further details the government's proposals for regulating non-legally qualified advisors. Equally ILPA broadly welcomes the Law Society scheme. ILPA recognises that at this moment in time it would be difficult to secure that such a scheme should be obligatory but ILPA believes that the fact of accreditation should carry with it a recognition that certain standards have been obtained and schemes such as this would develop benchmarks of good practice which would assist in setting appropriate standards for both the accredited and the unaccredited.

23. ILPA notes the Committee's comments with regard to an accreditation scheme for non-lawyer immigration advisors and confirms that it would welcome the chance to be consulted on the principles and details of such a scheme. However, ILPA is not able to take on any commitment for administering such a scheme. It does not have the resources to perform this function.

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